

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2418681
Decision Date:	04/03/2025	Hearing Date:	November 30, 2024
Hearing Officer:	Brook Padgett	Record Open:	March 03, 2025

Appellant Representative:




PACE Representative:

Pamela Azar, Harbor Health Services Inc.
ESP Director of Quality and Compliance



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Managed Care Enrollment 130 CMR 519.007
Decision Date:	04/03/2025	Hearing Date:	November 30, 2024
PACE Rep.:	P. Azar	Appellant Rep.:	
Hearing Location:	Telephonic - Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

On November 30, 2024, the Harbor Health Inc., (HH/Harbor) Elder Service Plan (ESP), MassHealth's agent for participants in the Program of All-Inclusive Care for the Elderly (PACE), informed the appellant that he would be involuntarily disenrolled from the Harbor Health PACE program effective January 01, 2025. The reason the appellant was being involuntarily disenrolled is because he had "engaged in disruptive and threatening behavior; and he had engaged in noncompliant behavior as it pertains to his care and as such, is jeopardizing his health and safety or the safety of others. Your Harbor PACE team has determined you are no longer safe to live alone and has recommended long term care placement." (Exhibit 1).

The appellant filed this appeal timely with the Board of Hearings (BOH) on December 06, 2024. (130 CMR 610.015(B); Exhibit 2). A PACE organization's decision to limit or deny requested services is grounds for appeal to BOH. (130 CMR 610.032(B)).¹

¹ 130 CMR 519.007(C)(1), the PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community. (a) A complete range of

Action Taken by Harbor Health

Harbor Health intends to involuntarily disenroll the appellant from the Harbor Health PACE program.

Issue

Did Harbor Health correctly determine the appellant is no longer safe to be alone and requires a long-term placement?

Summary of Evidence

Harbor Health was represented by the Director of Quality and Compliance and testified the appellant is an [REDACTED] male enrolled in HH ESP PACE program on March 01, 2023 with diagnoses of Parkinson's disease, depression, bilateral sensorineural deafness, primary osteoarthritis, functional hemiparesis (from a prior stroke), atrial fibrillation, hypertension, and hyperlipidemia. The appellant lives alone in an apartment at [REDACTED]. He has minimal natural supports, is estranged from his family, and relies heavily upon PACE and the [REDACTED] resident service coordinator to support him at home. HH testified that over the course of the appellant's enrollment in the HH PACE program, the appellant's health has continued to deteriorate marked by repeated falls.² These injuries, coupled with arthritic pain, Parkinson's tremors, and gait impairments have decreased the appellant's mobility, making everyday activities such as toileting, dressing, meal prep, and medication management challenging. Along with hearing loss, behavioral outbursts, and expressions of suicidal ideation, it has become a safety concern for the appellant to continue to live alone in the community.³

HH obtained EOHHS approval to proceed with involuntary disenrollment on January 26, 2024 after the discovery of unsecured guns in the appellant's home. This was concerning as the appellant had expressed suicidal ideation and subsequently denied there were guns in the home to his social worker. Due to the appellant's history of explosive behavioral outbursts, HH determined it was unsafe for HH staff to go in the home until the guns were removed. EOHHS was notified and approved of HH's action to suspend care until the caregivers' safety could be assured. The appellant agreed and signed a personalized care plan and his behavior and

health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals. (b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP). (c) Persons enrolled in PACE have services delivered through managed care (i) in day-health centers; (ii) at home; and (iii) in specialty or inpatient settings, if needed.

² Two falls: June 28, 2023 right thumb fracture, August 24, 2024 right periprosthetic femoral neck fracture.

³ Protective services reports filed on January 05, 2024, July 17, 2024, September 09, 2024, and October 11, 2024.

compliance improved for a brief period. HH rescinded the notice of involuntary disenrollment. The appellant's Interdisciplinary Team (IDT) has been recommending a higher level of care, repeatedly expressing their concerns for the appellant's safety at home. While the appellant did agree to visit an assisted living facility at one time, he has thus far refused to move. The appellant had his hip replaced on May 02, 2024 followed by subacute rehab course at a nursing facility. Upon discharge home, the appellant had a fall with periprosthetic hip fracture and was readmitted to hospital and nursing facility. Once again, the appellant's care team expressed concern for his safety at home and recommended long-term care placement; however, the appellant continued to insist on living at home. As the appellant's abilities have deteriorated, he has become more frustrated, resulting in more behavioral outbursts directed at his caregivers.

The appellant's care team continued to have serious concerns for the appellant's safety at home, as evidenced by recurrent falls, frequent incontinence, failing to keep medical appointments/attend day center as care planned, repeated suicidal ideation, inability to self-medicate, leaving medical facilities AMA, and inability to hear to visiting caregivers at the door. HH once again obtained EOHHS approval to send notice of involuntary disenrollment on November 30, 2024 as the appellant: "engaged in disruptive or threatening behavior and noncompliant behavior as it pertains to your care and as such, are jeopardizing your health or safety, or the safety of others."⁴ (See Exhibit 4 for timeline Harbor Health Elder Service Plan PACE program and Exhibits 5 and 6 for supporting medical records).

HH indicated that they would prefer that the appellant accept a long-term care placement and remain with HH ESP; however, the history and timeline demonstrate that the appellant has refused to accept this suggestion. HH maintains the appellant is currently a danger to himself, and has recently removed the lockbox that allowed caregivers to enter his home. Increasingly, he falls, soils himself, and fails to take medication, and has become threatening to staff. The appellant has indicated he has selected an alternate wrap-around services provider, and he is in the process of being screened for acceptance. HH requests that the original EOHHS decision be upheld and the appellant be involuntarily disenroll from HH's ESP. (Exhibit 4, 5 and 6).

The appellant attended the hearing and was represented by a social worker from [REDACTED] and responded that he was given less than a month's notice that HH intended to disenroll him

⁴ Legal Requirements Section 40.4 of the PACE Manual allows PACE organizations to involuntarily disenroll a Member for: "Disruptive or Threatening Behavior: A participant engages in disruptive or threatening behavior. Such behavior is defined as the following: Behavior that jeopardizes the participant's own health or safety, or the safety of others; or Consistent refusal to comply with an individual plan of care or the terms of the PACE enrollment agreement by a participant with decision-making capacity. Note that a PACE organization may not involuntarily disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior related to an existing mental or physical condition unless the participant's behavior is jeopardizing his or her health or safety or that of others. Noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments...." Cites to 42 CFR 460.164(a), (b), (d), and (e). 71 FR 71315 (Dec. 8, 2006)

from the PACE program. The appellant's representative maintained the appellant requires the supports and services provided by HH for his health and well-being. The representative and appellant argued that the appellant has difficulty hearing and with speech, making it hard to communicate, resulting in frustration and confusion rather than hostility toward his caregivers. The appellant stated he is willing to disenroll from HH and enroll into another health insurer, but he needs some time. The appellant's social worker stated the appellant has been attempting to transition into another program and would request some additional time to make contact.

At the request of the appellant's representative the record was left open until February 17, 2024 for the appellant to update the hearing officer on the appellant's transition to another PACE program. (Exhibit 7).

On February 12, 2025, the appellant's representative responded, stating the appellant had an appointment with the Enrollment Manager at the Summit/Fallon PACE program on February 24, 2025. The representative acknowledged that while this Summit/Fallon provides PACE services and has agreed to meet with the appellant, there are no guarantees they will accept him because they are governed by the same criteria for participation as the HH PACE program. The appellant continues to reach out to Senior Whole Health Benefits Advisor, to explore Senior Whole Health as a new Senior Care Options Health Plan. The appellant also has a new patient intake appointment scheduled for April 25, 2025 at Manet Community Health Center in Taunton. (Exhibit 8).

On February 14, 2025, the appellant's representative responded that the appellant has a follow-up with Senior Whole Health in the first week of March after hearing the outcome of intake meeting with Summit Eldercare PACE. The representative stated she believes the appellant will be able to have a proper transition plan in place by May 1st. The representative maintains that currently the appellant's care and cooperation with his care team at Harbor Health PACE is stable and he continued to refuse to enter long-term care. (Exhibit 8A).

HH responded on February 14, 2025 stating that HH has carefully followed the regulations outlined in §460.164 regarding involuntary disenrollment and has actively worked to assist in the appellant's transition of care. To support the appellant HH has:

- Assisted in finding a new PCP and secured an appointment for April 25, 2025;
- Referred the appellant to Senior Whole Health, helped schedule his intake, and attended his January 09, 2025 intake appointment;
- Provided support at the home visit with the Senior Whole Health enrollment nurse on January 09, 2025, where the appellant was offered February 01, 2025 enrollment, which he declined citing that he preferred to wait for the outcome of this appeal;
- Continued to provide services under "aid pending" status while the appeal is in process;
- Committed to ensuring access to necessary medications and has agreed to continue prescribing them until his April 25, 2025, PCP appointment.

HH argues that an April 01, 2025 transition of services is attainable and request a decision regarding the appellant's appeal, maintaining that without a final appeal determination it remains challenging to establish the appellant's transfer of care date. PACE is only able to disenroll on the first of the month, should HH receive a decision to uphold the involuntary disenrollment the disenrollment would be effective the first of the following month. If the appellant enrolls in another plan, he would automatically be disenrolled from HH, if he doesn't enroll in another plan and is disenrolled from HH he would automatically revert back to MassHealth standard and traditional Medicare. (Exhibit 8B).

On February 18, 2025, the hearing officer extended the record open period until March 03, 2025 to allow the appellant to update the parties regarding the February 24, 2025 Summit PACE enrollment assessment. (Exhibit 9, 9A).

On March 03, 2025, the appellant's representative responded that the appellant completed an initial intake assessment with Fallon/Summit Eldercare PACE program on March 03, 2025 which was delayed a week due to staff illness. Fallon/Summit Eldercare PACE intends to perform a follow-up assessment on March 10, 2025 with their whole team. Fallon/Summit Eldercare PACE indicated they will have a decision whether they would take the appellant into their program by March 11, 2025, at which time the appellant would decide to move forward with enrolling with Summit PACE or move forward with enrolling in Senior Whole Health. HH responded on March 03, 2025 questioning whether it seemed feasible that the appellant would be able to enroll in a new plan, either Summit Eldercare or Senior Whole Health, effective April 01, 2025. (Exhibit 10).

On March 04, 2025, the appellant's representative responded that it is "more probable that [the appellant] will be in a new plan for 5/1/2025." (Exhibit 11).

On March 12, 2025, the appellant's representative responded that the Summit PACE team met with the appellant on March 10, 2025, but had no information regarding the determination of the appellant's enrollment in the program. (Exhibit 12).

On March 21, 2025, the appellant's representative indicated Summit PACE is not able to enroll the appellant at this time, but that his case would undergo further review. The appellant met with Senior Whole Health to complete enrollment for May 01, 2025. The appellant may have a couple of weeks gap between getting new services set up for him with homecare agencies, and other supports and services; he needs an ending with HH PACE. The appellant also met with his new Protective Services Case Manager from Bristol Aging and Wellness. (Exhibit 13).

On March 21, 2025, HH responded that the PACE program can only process enrollments and disenrollments on the first of the month, which means it's not possible to be enrolled in two health plans at the same time. Once the appellant enrolls in a new plan, his PACE benefits will end on the first of the following month. Due to this, a gap in services may be unavoidable. To

help ensure there's no disruption it would be best for the appellant to sign with Senior Whole Health on April 01, 2025, so that he can keep his upcoming appointment with his new Senior Whole Health PCP on April 25, 2025 and transition his care. HH indicated that if there is any gap in services Protective Services should be able to assist, as they have been involved since January. Since the disenrollment notice of November 30, 2024, HH has continued to provide services. (Exhibit 14).

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. On March 01, 2023, the appellant enrolled in HH ESP PACE program with diagnoses of Parkinson's disease, depression, bilateral sensorineural deafness, osteoarthritis, functional hemiparesis, atrial fibrillation, hypertension, and hyperlipidemia. (Exhibit 4 and testimony).
2. The appellant has arthritic pain, Parkinson's tremors, and gait impairments which impair his mobility, making everyday activities such as toileting, dressing, meal prep, and medication management challenging. (Exhibit 4 and testimony).
3. The appellant lives alone with minimal natural supports. (Exhibit 4 and testimony).
4. While enrolled in HH PACE the appellant's health has continued to deteriorate marked by repeated falls. (Exhibit 4 and testimony).
5. The appellant's behavioral outbursts and expressions of suicidal ideation are a safety concern as he lives alone in the community. (Exhibit 4 and testimony).
6. On January 26, 2024, HH obtained EOHHS approval to proceed with involuntary disenrollment. (Exhibit 4).
7. The notice of involuntary disenrollment was rescinded after the appellant agreed and signed a personalized care plan and his behavior and compliance improved. (Exhibit 4 and testimony).
8. On May 02, 2024 the appellant had his hip replaced followed by subacute rehab course at a nursing facility. (Exhibit 4 and testimony).
9. On May 14, 2024, upon discharge home, the appellant fell and suffered a periprosthetic hip fracture and was readmitted to hospital and nursing facility. (Exhibit 4 and testimony).

10. The appellant's IDT has recommended a higher level of care, repeatedly expressing their concerns for the appellant's safety at home. (Exhibit 4 and testimony).

Analysis and Conclusions of Law

HH administers PACE on behalf of MassHealth, and as MassHealth's agent, is bound to follow MassHealth laws and regulations, as well as federal laws and regulations governing PACE.

The PACE program is a comprehensive health program that is designed to keep frail, older individuals who are certified eligible for nursing-facility services living in the community (130 CMR 519.007(C)(1)). The MassHealth regulations set forth the following regarding PACE:

- (a) A complete range of health-care services is provided by one designated community-based program with all medical and social services coordinated by a team of health professionals.
- (b) The MassHealth agency administers the program in Massachusetts as the Elder Service Plan (ESP).
- (c) Persons enrolled in PACE have services delivered through managed care
 - 1. in day-health centers;
 - 2. at home; and
 - 3. in specialty or inpatient settings, if needed.

In determining PACE eligibility, the applicant or member must meet all of the following criteria:

- (a) be 55 years of age or older;
- (b) meet Title XVI disability standards if 55 through 64 years of age;
- (c) be certified by the MassHealth agency or its agent to be in need of nursing-facility services;
- (d) live in a designated service area;
- (e) have medical services provided in a specified community-based PACE program;
- (f) have countable assets whose total value does not exceed \$2,000 or, if assets exceed these standards, reduce assets in accordance with 130 CMR 520.004: *Asset Reduction*; and
- (g) have a countable-income amount less than or equal to 300% of the federal benefit rate (FBR) for an individual.

(130 CMR 519.007(C)(2)).

The PACE program is also governed by federal regulations. The federal regulations concerning involuntary disenrollment from the program are set forth in 42 CFR §460.164:

- (a) **Effective date.** A participant's involuntary disenrollment occurs after the PACE organization meets the requirements set forth in this section and is effective on the first

day of the next month that begins 30 days after the day the PACE organization sends notice of the disenrollment to the participant.

(b) **Reasons for involuntary disenrollment.** A participant may be involuntarily disenrolled for any of the following reasons:

- (1) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any premium due the PACE organization.
- (2) The participant, after a 30-day grace period, fails to pay or make satisfactory arrangements to pay any applicable Medicaid spend down liability or any amount due under the post-eligibility treatment of income process, as permitted under §§ 460.182 and 460.184.
- (3) The participant or the participant's caregiver engages in disruptive or threatening behavior, as described in paragraph (c) of this section.
- (4) The participant engages in disruptive or threatening behavior, as described in paragraph (c) of this section.
- (5) The participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances.
- (6) The participant is determined to no longer meet the State Medicaid nursing facility level of care requirements and is not deemed eligible.
- (7) The PACE program agreement with CMS and the State administering agency is not renewed or is terminated.
- (8) The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

(c) **Disruptive or threatening behavior.**

- (1) For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:
 - (i) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or
 - (ii) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.
- (2) For purposes of this section, a participant's caregiver who engages in disruptive or threatening behavior exhibits behavior that jeopardizes the participant's health or safety, or the safety of the caregiver or others.

(d) **Documentation of disruptive or threatening behavior.** If a PACE organization proposes to disenroll a participant based on the disruptive or threatening behavior of the participant or the participant's caregiver, the organization must document the following information in the participant's medical record:

- (1) The reasons for proposing to disenroll the participant.
- (2) All efforts to remedy the situation.

(e) Noncompliant behavior.

- (1) A PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others.
- (2) For purposes of this section, noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

(f) State administering agency review and final determination. Before an involuntary disenrollment is effective, the State administering agency must review it and determine in a timely manner that the PACE organization has adequately documented acceptable grounds for disenrollment.

HH informed the appellant that he will be involuntarily disenrolled from the HH ESP PACE program because he has engaged in noncompliant behavior, jeopardizing his own health or safety, and/or the safety of others. HH and the appellant's IDT determined that the appellant is no longer safe to live alone in the community and recommended long-term care placement. This determination was made based on the appellant's continued deterioration, refusal of routine care and services, as well as his displays of agitated and threatening behaviors toward clinicians and caregivers attempting to assist him at his home.⁵

The appellant has a diagnosis of primary Parkinson's disease, depression, bilateral sensorineural deafness, primary osteoarthritis, functional hemiparesis from a prior stroke, atrial fibrillation, hypertension, and hyperlipidemia. The appellant lives alone in an apartment and has minimal natural supports, is estranged from his family, and relies heavily upon PACE and resident service coordinator for care. HH credibly testified that over the course of the appellant's enrollment in the HH ESP PACE program, he has continued to deteriorate marked by repeated falls and other issues.⁶ These fall injuries, coupled with arthritic pain, Parkinson's tremors and gait impairments,

⁵ The appellant had a fall resulting in a fracture on August 24, 2024 and returned home from the skilled nursing facility against his care teams' advice on September 24, 2024. Since that time the appellant's compliance has declined, and his previous disruptive behaviors have returned putting the appellant's and his care teams' safety at risk. (Exhibit 4 and Testimony).

⁶Medical notes: 3/11/2024 attends day program once a week, falls related to overestimating abilities and hip pain, overall compliant behavior and ability to meet majority of own needs with 2x/week HHA support. ER following unwitnessed fall at 3:45am while admitted to SNF. 6/11/2024 - fall at SNF. Attempted to go to bathroom unassisted and fell. 6/14/2024 Pre-discharge home safety evaluation with PACE became irate, angry, screaming at everyone, extreme behaviors, refusing to go back to SNF. Wants to go home, accepting of the risks. discharged home on

have impaired the appellant's mobility, making everyday activities such as toileting, dressing, meal prep, and medication management challenging. Along with hearing loss, behavioral outbursts, and expressions of suicidal ideation, the appellant's IDT has determined it is a safety risk for the appellant to continue to live alone in the community.

Chapter 4 section 40.4 of the PACE Manual allows PACE organizations to involuntarily disenroll a Member for: Consistent refusal to comply with an individual plan of care or the terms of the PACE enrollment agreement by a participant with decision-making capacity. Note that a PACE organization may not involuntarily disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior related to an existing mental or physical condition unless the participant's behavior is jeopardizing his or her health or safety or that of others. Noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments... ." (42 CFR 460.164(a), (b), (d), and (e)).

██████████ - ER shortly after d/c home when found face down and screaming. ██████████ ER for fall with right hip pain, found to have right femoral neck fracture. ██████████ - Admission for periprosthetic hip fracture and failure to thrive. 3 SNF bed offers refused wants to go home. Cannot ambulate, home is not a safe option. ██████████ SNF admission for Sub-Acute Rehab. ██████████ - Expressing suicidal ideation, made allegations against SNF staff that 'nasty' towards him, 'she slapped me and pushed me on the bed'. SW alerted SNF management, reported to protective and DPH. ██████████ - Expressing suicidal ideation, will slit his wrists, upon hearing discharge is scheduled for ██████████ 9/██████████ - Agreed to ██████████ date, will not consider higher level of care. ██████████ Discharged home. ██████████ found on floor by OT at approx. 10am reported he fell about 11pm on ██████████ when attempting to transfer from w/c to recliner. EMS contacted for lift and assistance, refused transport for ER evaluation. ██████████ in bed with soiled bed and pants, SN notified homecare director of status and unsafe to be home alone. ██████████ incontinent, notices own functional decline, refused to eat or drink. ██████████ unpredictable behavior including verbally and physically threatening, deteriorating physically, lack of acknowledgement of limits. IDT pursue disenrollment. scheduled to see in office, did not show. ██████████ fall in the bathroom, EMS lift and assist. ██████████ two falls past two days, soiled bed upon arrival, agitated states "where the hell have you been". ██████████ IDT team requested PACE long term care assessment based on unsafe behaviors, functionality and independence declining, poor judgment regarding mobility and fall risk, not safe in home alone. ██████████ reported "somewhat wants to hurt himself" due to depression. Update reports depression and feeling discouraged, would shoot himself if he still had his guns, no alternative plan, reported he has nobody to call if feeling suicidal. ██████████ upset at suggestion of LTC and not having his cat with him, may need guardianship, reports anxiety at night. ██████████ continuation of depression and anxiety, symptoms are poorly controlled, he reports functioning difficult, no longer trusts ██████████ (previous support) based on disagreement, no trust in anyone, thinking about hanging himself, has a plan but no means to do it. ██████████ ER worsening right hand pain and edema diagnosed with gout attack and prescribed prednisone taper. ██████████ frustrated with recent death of sister, breaking closed captioning device, and super ears. Night home visit, initially unwelcoming to home caregiver, disagreed behavior is an issue "frustrated by inability to hear". ██████████ Unable to access home to provide care for participant reported ringing doorbell for an hour and also calling home phone number with no response. No longer has the key in a door lock box so hard to get access if not wearing super ears due to his hearing impairment. ██████████ - removed lock box from front door with the key for the aides to come in. Does not like them "just coming in". Preferred caregiver, has her own key but does not work every day. Multiple attempts by caregiver to access home to provide care called and no answer - not unusual. ██████████ PCP went to apartment for scheduled visit - not home. ██████████ fallen (got help using lifeline) and the services had come but he refused to go to the hospital for checkup. ██████████ AM not answering the door to caregiver.

Further if a PACE organization proposes to disenroll a participant based on the disruptive or threatening behavior of the participant or the participant's caregiver, the organization must document the following information in the participant's medical record: (1) The reasons for proposing to disenroll the participant. (2) All efforts to remedy the situation. (42 CFR § 460.164).⁷

While the appellant's representative and appellant argued that the appellant has difficulty hearing and with speech making it hard to communicate, resulting in frustration and confusion rather than hostility toward his caregivers, HH has credibly testified and the medical documentation confirms that the appellant requires a more structured long-term care placement than he currently has in the community. The record demonstrates the appellant has engaged in disruptive and threatening behavior, has been noncompliant with his care, and has had multiple falls, jeopardizing his health and safety and/or the safety of others. Despite this evidence, the appellant has refused any long-term care placement and has testified that his preferred option is to voluntarily disenroll from HH ESP PACE and select an alternate wrap-around services provider.

The appellant was notified of the HH request for involuntary disenrollment on November 30, 2024. The appellant appealed that action and at his hearing on January 16, 2025 stated he wanted to voluntarily disenroll from HH ESP PACE and needed more time to enroll with an alternate services provider. Although the appellant and his representative have tried on multiple occasions to enroll the appellant in an alternative PACE program, he has been unable to find a program willing to accept him as of March 25, 2025. (See Exhibits 8-14).

The appellant's IDT has recommended the appellant receive a higher level of care, due to their serious concerns for the appellant's safety at home as demonstrated by his noncompliant and disruptive behavior, as well as recurrent falls, frequent incontinence, repeated suicidal ideation,

⁷ Involuntary disenrollment. (a) *Effective date*. A participant's involuntary disenrollment occurs after the PACE organization meets the requirements set forth in this section and is effective on the first day of the next month that begins 30 days after the day the PACE organization sends notice of the disenrollment to the participant. (b) *Reasons for involuntary disenrollment*. A participant may be involuntarily disenrolled for any of the following reasons: (4) The participant engages in disruptive or threatening behavior, as described in paragraph (c) of this section. (c) *Disruptive or threatening behavior*. (1) For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following: (i) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or (ii) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement. (2) For purposes of this section, a participant's caregiver who engages in disruptive or threatening behavior exhibits behavior that jeopardizes the participant's health or safety, or the safety of the caregiver or others. (d) *Documentation of disruptive or threatening behavior*. If a PACE organization proposes to disenroll a participant based on the disruptive or threatening behavior of the participant or the participant's caregiver, the organization must document the following information in the participant's medical record: (1) The reasons for proposing to disenroll the participant. (2) All efforts to remedy the situation.

inability to self-medicate, and his inability to hear visiting caregivers at the door.

It is the appellant's burden to show by a preponderance of the evidence that MassHealth or the MassHealth agent's decision to not authorize current PACE services and to involuntarily disenroll the appellant from the PACE program is incorrect. I find the appellant has not met this burden as he has failed to provide sufficient evidence to effectively rebut the appellant's care team's concerns that the appellant continues to be a danger to himself and is unsafe at home.

HH has provided sufficient documentation to support its decision to disenroll the appellant from HH ESP PACE and have made all efforts to try to remedy the situation. The HH decision to involuntarily disenroll the appellant from the Harbor Health PACE program because he is no longer safely able to live alone, and it more appropriately suited for a long-term care placement is upheld and this appeal is DENIED.

Order for Harbor Health

Disenroll the appellant from the Harbor Health Inc., Elder Service Plan, Program of All-Inclusive Care for the Elderly.⁸

⁸ Chapter 4 section 40.4 - Once it has been deemed appropriate to involuntarily disenroll the participant, the PACE organization must follow the disenrollment process as defined in 42 CFR § 460.166 and discussed in 40.2 of this manual. 40.2 - Disenrollment Process (Rev.1, Issued: 06-03-11) The PACE organization must take the following actions upon voluntary or involuntary disenrollment or death of a participant: Complete the disenrollment as expeditiously as allowed under Medicare and Medicaid; Coordinate the disenrollment date between Medicare and Medicaid as applicable; Give reasonable advance notice to the participant about disenrollment; Submit the disenrollment transaction to CMS systems in a timely and accurate manner. The PACE organization must continue to provide all needed services, and the PACE participant must continue to use the PACE organization's services and pay any premiums, until the date the enrollment is actually terminated. The disenrollment date will be coordinated between Medicare and Medicaid for a participant who is dually eligible. No disenrollment will become effective until the participant is appropriately reinstated into other Medicare and Medicaid programs and alternative services are arranged

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Brook Padgett
Hearing Officer
Board of Hearings

CC:

[REDACTED]

PACE Representative: Pamela Azar, Harbor Health, 1135 Morton Street, Mattapan, MA 02126.